IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

FRIDAY, THE 23RD MARCH 2007 / 2ND CHAITHRA 1929

OP.No. 13308 of 1999(H)

PETITIONER:

TESSY, W/O.KONIKKARA KURIAN,
AGED 40, ELAMKULAM VILLAGE, KALOOR,
PUTHIAROAD DESOM, KANAYANNUR TALUK, ERNAKULAM.

BY ADV. SRI.J.JOSEPH
SRI.K.P.DANDAPANI

RESPONDENTS:
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1. THE SYNDICATE BANK WITH HEAD OFFICE AT MANIPAL AND A BRANCH AT PARAMEKKAVU DEVASWOM BUILDING, PALACE ROAD, TRICHUR-10, REP. BY ITS MANAGER AT TRICHUR BRANCH.

2. DEBT RECOVERY TRIBUNAL CONSTITUTED UNDER RECOVERY OF DEBTS DUE TO BANK AND FINANCIAL INSTITUTIONS ACT, 1993, CHENNAI.

3. POPULAR PLASTICS, X/839, HIGH ROAD, TRICHUR.

4. LISSY DAVIS, AGED 37, W/O.K.V.DAVIS, PARTNER OF 3RD RESPONDENT FIRM, RESIDING AT KOLENGADAN HOUSE, AYYANTHOLE, TRICHUR.

5. ROSSY FRANCIS, AGED 35, W/O.K.V.FRANCIS, .DO.

6. K.V.DAVIS, AGED 43, S/O.K.P.VARAPPAN, .DO.

7. K.V.FRANCIS, AGED 46, .DO.

8. SUB COURT (SECOND ADDITIONAL), TRICHUR.

9. UNION OF INDIA REP. BY SECRETARY TO GOVERNMENT, FINANCE DEPARTMENT, CENTRAL SECRETARIAT, NEW DELHI.

R9 BY ADV. SRI.AJITH KRISHNAN, ADDL.CGSC
R1 BY ADV. SRI.R.S.KALKURA
R6 BY ADV. SRI.S.P.ARAVINDAKSHAN PILLAY

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 23/03/2007, THE COURT ON 23/03/2007 DELIVERED THE FOLLOWING:

ORDER ON C.M.P. NOS.21408/1999 & 13398/2000 IN O.P. NO.13308/1999

DISMISSED:

23.3.2007 SD/-(C.N.RAMACHANDRAN NAIR, JUDGE.)

APPENDIX

PETITIONER'S EXHIBITS:

P1: TRUE COPY OF THE DECREE DT.21.10.1993 IN O.S. NO.18/90 OF THE COURT OF JUDGE OF TRICHUR.

P1(a): TRUE COPY OF THE EXECUTION PETITION IN O.S. NO.18/1990 FILED BEFORE THE COURT OF SUB JUDGE, TRICHUR.

P2: TRUE COPY OF ORDER DT.4.3.1997 IN E.P. NO.113/95 IN O.S. NO.18/90 OF THE COURT OF SUB JUDGE, TRICHUR.

P3: TRUE COPY OF THE E.A. 454/97 IN E.P. 113/95 IN O.S. 18/90 FILED BY PETITIONER BEFORE THE SUB COURT, TRICHUR.

P4: TRUE COPY OF THE ORDER DT.23.1.99 IN E.A. 454/97 OF THE COURT OF SUB JUDGE, TRICHUR.

RESPONDENT'S EXHIBITS:

R1(a): TRUE COPY OF THE NOTIFICATION DT.4.11.1996 PUBLISHED IN GAZETTE OF INDIA EXTRA ORDINARY ISSUED TO THE JOINT SECRETARY TO THE GOVT. OF INDIA.

R1(b): TRUE COPY OF THE PROCEEDINGS I E.P. IN O.S. 18/90 OF THE EXECUTION COURT.

TRUE COPY

P.A. TO JUDGE

C.N.RAMACHANDRAN NAIR, J.

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O.P. No.13308 of 1999

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Dated this the 23rd day of March, 2007.

JUDGMENT

The petitioner is challenging Ext.P2 order by which the Sub Court cancelled sale of property in favour of the petitioner made on 11.2.1997. It is seen from the impugned order that without noticing that the Sub Court has no jurisdiction to continue execution proceedings, the Court proceeded with sale of property which was made in favour of the petitioner on 11.2.1997. However, the court immediately noticed it's want of jurisdiction and within three weeks from date of sale i.e. on 4.3.1997 it cancelled the sale by Ext.P2 order. Even though petitioner was given freedom to withdraw the amount then and there, that was 10 years back, petitioner did not withdrew the amount, but pursued the matter by filing this O.P. In the circumstances, I am unable to understand the grievance of the petitioner, more so, when the court ceased to have jurisdiction by virtue of operation of Section 31(1) of the Recovery of Debts Due to Banks and Financial Institutions Act, 1993 which says that every proceeding including and Execution Petition where the decreetal amount is above Rs.10 lakhs, will stand transferred to DRT. The O.P. is accordingly dismissed leaving

freedom to the petitioner to receive the amount from the Sub Court which shall release it with accrued interest to the petitioner. There will be further direction to the Sub Court to immediately transfer the E.P. to the D.R.T. for proceeding with execution wherein petitioner is also free to participate in the sale conducted by the Recovery Officer.

C.N.RAMACHANDRAN NAIR
Judge

pms